

§ 10.6

27 CFR Ch. I (4–1–04 Edition)

§ 10.6 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Director under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Director under this Act. The Act also provides that the Director is authorized to require, in such manner and such form as he or she shall prescribe, such reports as are necessary to carry out the powers and duties under this chapter.

(b) *Examination and subpoena.* Any appropriate ATF officer shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. An appropriate ATF officer shall also have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

(c) *Reports required by the appropriate ATF officer—*(1) *General.* The appropriate ATF officer may, as part of a trade practice investigation of an industry member, require such industry member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation.* The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the information specified by the appropriate ATF officer. The period covered by the report will not exceed three years.

(3) *Filing.* The report will be filed in accordance with the instructions of the appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0392)

[T.D. ATF–364, 60 FR 20426, Apr. 26, 1995. Redesignated and amended by T.D. ATF–428, 65 FR 52020, Aug. 28, 2000]

Subpart B—Definitions

§ 10.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 6, 8, 10 and 11.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

Officer. All corporate executives, including presidents, vice presidents, treasurers, and chief executive officers.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages.

[T.D. ATF-74, 45 FR 63257, Sept. 30, 1980, as amended by T.D. ATF-364, 60 FR 20426, Apr. 26, 1995; T.D. ATF-428, 65 FR 52020, Aug. 28, 2000]

Subpart C—Commercial Bribery

§ 10.21 Commercial bribery.

It is unlawful for an industry member, directly or indirectly or through an affiliate, to induce a trade buyer to purchase the industry member's products, to the complete or partial exclusion of products sold or offered for sale by other persons in interstate or foreign commerce, by offering or giving a bonus, premium, compensation, or other thing of value to any officer, employee, or representative of the trade buyer. The bonus, premium, compensation, or other thing of value need not be offered or given for the purpose of directly inducing a trade buyer to purchase from the seller, but rather is applicable if an industry member induces officers, employees or representatives of the trade buyer to promote sales of the industry member's products and thereby indirectly induces the trade buyer to purchase from the industry member.

§ 10.22 Employee associations.

Gifts, donations, and other payments such as for advertising in publications, by an industry member, to trade buyer employee associations are considered the same as bonuses, premiums, compensation, or other things of value given directly to the employees, since the benefits resulting from the gifts or payments flow to the individual members of the association.

§ 10.23 Gifts or payments to wholesalers.

Although industry members are not prohibited from offering or giving money or other things of value to a wholesale entity (i.e., the corporation, partnership, or individual who owns the business), the wholesaler will be considered as acting as a mere conduit between its officers, employees, or representatives and the industry member, if:

(a) There is an agreement or understanding, implied or explicit, that the money or thing of value will be passed on to the officers, employees, or representatives, or

(b) It is obvious by the very nature of the item given (such as a free trip) that a pass through to the officers, employees, or representatives is clearly contemplated, or

(c) The records of the recipient wholesaler do not accurately reflect such money or item as an asset or the wholesale entity, thus being subject to all ensuing tax consequences as distinguished from the receipt of the money or item as a personal asset of an officer, employee, or representative.

§ 10.24 Sales promotion contests.

Sales contests sponsored by an industry member which offer prizes directly or indirectly to trade buyer officers, employees or representatives are inducements within the meaning of the Act.

Subpart D—Exclusion

SOURCE: T.D. ATF-364, 60 FR 20427, Apr. 26, 1995, unless otherwise noted.

§ 10.51 Exclusion, in general.

(a) Exclusion, in whole or in part occurs:

(1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) trade buyer independence at risk by means of a tie or link between the industry member and trade buyer or by any other means of industry member control over the trade buyer, and

(2) Such practice results in the trade buyer purchasing less than it would have of a competitor's product.

(b) Section 10.52 lists practices that create a tie or link that places trade buyer independence at risk. Section 10.53 is reserved and will list practices not resulting in exclusion. Section 10.54 lists the criteria used for determining whether other practices can put trade buyer independence at risk.